

## **Exhibit 28**

**Redacted**

**Beth Fegan**

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**From:** Murphy, Bart [Bart.Murphy@icemiller.com]  
**Sent:** Wednesday, November 21, 2007 3:23 PM  
**To:** Beth Fegan  
**Cc:** Okenfuss, Judy; Petersen, James  
**Subject:** RE: RC2: informal data request for settlement purposes

**REDACTED**

Further clarifying the response to number 7, the range of estimated retail prices for items sold individually begins at approximately \$8.80 and not \$10.00 as mistakenly indicated.

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-----Original Message-----

**From:** Murphy, Bart  
**Sent:** Wednesday, November 21, 2007 3:20 PM  
**To:** 'Beth Fegan'  
**Cc:** Okenfuss, Judy; Petersen, James  
**Subject:** RC2: informal data request for settlement purposes

Beth,

This is for settlement purposes only in response to the informal inquiries you made in your message below concerning information plaintiffs needed to make a settlement demand, and may not be used for any other purpose. You may assume that discovery in this case would develop the following facts. We would request that this response be treated as confidential. Please confirm you are willing to treat it as such.

I preface this response by noting the recall was issued based on data available to RC2 at the time it was issued and not every toy recalled actually has excess levels of lead. [REDACTED]

[REDACTED] the point is that not all of the units recalled have excess lead levels in surface paint. This point has been illustrated by recent local news coverage which confirmed that certain recalled items did not have excess lead levels when they tested them. Below are responses to the inquiries you raised. As indicated above you may assume that discovery in this case will reveal the following:

1. The total number of Thomas and Friends Wooden Railway units that were subject to recall in the June and September recalls?

RESPONSE: JUNE RECALL: APPROXIMATELY 1.5 MILLION UNITS. SEPT RECALL: APPROXIMATELY 200,000 UNITS

2. The total number of Thomas and Friends Wooden Railway units recalled in June and Sept that were actually sold to consumers?

RESPONSE: It is estimated that approximately [REDACTED] recalled units were actually sold to consumers.

3. The number of units containing potentially excess levels of lead actually sent to

consumers by RC2 during the recall program?

RESPONSE: I assume your inquiry refers to the fact RC2 has acknowledged that it sent bonus items to consumers who returned recalled items and one of these items was the Toad with Brake Lever and that RC2 later learned certain of these items apparently have excess lead levels in the surface paint. It is estimated that approximately [REDACTED] Toad units were sent to consumers as bonus items in the recall process. Of these [REDACTED] units we estimate that approximately [REDACTED] of them may have excess lead levels.

4. The number of recalled units returned to RC2 by consumers in the recall to date?

RESPONSE: As of November 14, 2007 consumers have returned approximately [REDACTED] recalled items (both recalls) to RC2.

5. The average number of recalled units returned to RC2 per consumer?

RESPONSE: As of November 14, 2007, the average number of units returned in the recall process per consumer is [REDACTED] pieces for the June recall and [REDACTED] pieces for the September recall.

6. The number of recalled units returned to RC2 from retailers?

RESPONSE: As of November 14, 2007 the number of recalled units returned to RC2 from retailers is approximately [REDACTED].

7. The range of retail prices for the recalled units?

RESPONSE: The response to this inquiry is complex. Certain items recalled are not sold individually and are only sold as part of sets. For example the green maple tree is an accessory item sold as part of certain sets and is not sold separately. It may be part of a set which has a retail price of \$39.00 but it is one of perhaps 50 component items in that set. The retail value of the green maple tree is obviously far less than \$39.00. This applies to several other items of the 31 components of the Thomas and Friends Wooden Railway line which have been recalled. With respect to items that are individually sold as stand alone items the range of retail prices, which of course are determined by the retailers, is believed to be from \$10.00 to \$70.00.

8. The total retail value of the recalled toy units?

RESPONSE: Retail prices vary making this very difficult to answer at this point. Further, as indicated in the response above certain recalled components are not individually sold which further inhibits the ability to answer this inquiry. In addition some of the recalled items were actually given away and had no retail value.

9. Any estimates by RC2 of the average number of recalled units still held per consumer.

RESPONSE: Based on information we have as of November 14, 2007 approximately [REDACTED] recalled units which we estimate are or were in the hands of consumers have not been returned to RC2. Whether these items remain in the hands of consumers or whether consumers have taken action individually to dispose of the recalled items themselves is unknown. As to the average number of recalled units still held per consumer this is speculative. The only information available is the data for the average number of pieces returned by consumers under each of the two recalls, which as of November 14, 2007 is [REDACTED] pieces for the June recall and [REDACTED] pieces for the Sept. recall. One could speculate that to the extent consumers are in fact holding recalled items it would be at these levels.

10. Any estimates of the number of consumers that purchased recalled units.

RESPONSE: The following answer to this inquiry is speculative and whether this analysis/answer is statistically valid or not is unknown. However, if one assumes that the average number of pieces returned in each of the two recalls (██████ for June recall and ██████ for Sept. recall) is a valid reflection of the average number of recalled pieces purchased, then approximately ██████ consumers purchased items recalled in the first recall and approximately ██████ consumers purchased items recalled in the second recall. Of course there may be and is likely overlap between the two groups. Again the statistical validity of this analysis is unknown and I have reservations about it.

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-----Original Message-----

From: Beth Fegan [mailto:beth@hbsslaw.com]  
Sent: Thursday, November 08, 2007 6:04 PM  
To: Murphy, Bart  
Subject: RC2: informal data request for settlement purposes

Bart,

Per our discussion yesterday and in order to allow us to formulate a settlement demand, set forth below is our informal request (or wish list) for data. The more information you can provide, the more vetted our initial demand will be.

- \* the total number of tainted toy units that were subject to any recall
- \* the number of tainted toy units actually sold to consumers
- \* the number of tainted toy units actually sent to consumers by rc2 during the recall program
- \* the number of tainted toy units returned to rc2 by consumers
- \* the average number of tainted toy units returned to rc2 per consumer
- \* the number of tainted toy units returned to rc2 from retail stores
- \* the range of retail prices for the tainted toy units
- \* the average retail price of the tainted toy units
- \* the total retail value of the tainted toy units
- \* any estimates by rc2 of the average number of tainted toy units held per consumer
- \* any estimates of the number of consumers that purchased tainted toy units

Thanks Bart. Feel free to give me a call if you are more comfortable discussing these numbers in the first instance by phone.

Beth

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